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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,051	01/14/2004	Leif E. Stern	HW-6916	5106
26294	7590	05/11/2006	EXAMINER	
TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114			DEL SOLE, JOSEPH S	
			ART UNIT	PAPER NUMBER

1722

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding..

**Office Action Summary**

Application No.

10/758,051

Applicant(s)

STERN, LEIF E.

Examiner

Joseph S. Del Sole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,10,11 and 14-21 is/are rejected.
- 7) ☒ Claim(s) 3,6-9,12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/14/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Specification***

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT
- (d) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (e) BRIEF SUMMARY OF THE INVENTION.
- (f) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (g) DETAILED DESCRIPTION OF THE INVENTION.
- (h) CLAIM OR CLAIMS (commencing on a separate sheet).
- (i) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

2. The disclosure is objected to because of the following informalities: **a)** the specification must be amended to include the required subject headings for the included sections which are set forth above; **b)** at page 2, line 5 the reference to a claim number is inappropriate and must be deleted; and **c)** at lines 15 and 17 respectively "figure 1 is" and "figure 2 is" must be changed to --Figure 1 is-- and --Figure 2 is--.

Appropriate correction is required.

### ***Claim Objections***

3. Claims 1-21 are objected to because of the following informalities: **a)** the Examiner notes that the claims submitted 5/19/04 are not the proper claims because

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they differ from the claims of the preliminary amendment of 1/14/04. To avoid confusion a new proper set of claims must be submitted with the appropriate changes. The following action treats the claims in the form of the preliminary amendment of 1/14/04. Appropriate correction is required.

4. Claim 5 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 5 contains no structural limitation that is lacking from parent claim 1.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, 4-5, 10-11 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Robards, Jr. et al (5,323,931).

Robards teach a device for discharge or outfeed of product from a container (Figs 7 and 9), wherein the discharge of the product from the container is accomplished by imparting a triggering movement to a trigger (Figs 7 and 9, #78), said triggering movement being transferred, to a piston means (Fig 7, #72) such that said piston means is brought to perform a discharge movement in a discharge direction for discharge or outfeed of the product from the container, characterized in that at least one

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retraction or withdrawal means (Fig 7, #77 and col 7, lines 45-50) is provided for imparting to the piston means a retraction movement in a retraction direction opposite to the discharge direction, such that the pressure from the piston means against the container is relieved for accomplishing non-drop operation after discharge, that at least one stroke setting or stroke determining means (Figs 18 and 19, #s 156 and 158) is provided for determining the stroke of the piston means and thereby, the dose volume during each discharge or outfeed of product from the container, and that a stroke setting means for determining a stroke of the piston means is replaceably provided (col 11, lines 45-65) on said piston means such that it can be replaced by another stroke setting means for determining or setting another stroke;

the retraction means cooperates with the piston means with such friction that it can bring along or move the piston means in the retraction direction (R);

the stroke setting means is provided to determine the stroke of the piston means by stopping the retraction movement of the piston means in the retraction direction (col 11, lines 45-65);

the stroke setting means is replaceably provided on the piston means such that a stroke setting means which is adapted for a stroke of the piston means is replaceable by a stroke setting means which is adapted for another stroke of the piston means (col 11, lines 45-65);

a gripping appliance (Figs 7 and 9, #s 88 and 98) is provided to be affected, by the trigger such that it is brought to grasp the piston means for transfer of the triggering

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movement of the trigger to the piston means for imparting thereto a discharge movement in the discharge direction;

the gripping appliance and the retraction means cooperate with each other such that the retraction means can pull the gripping appliance in the retraction direction relative to the piston means;

a plurality of stroke setting means (#s 156 and 158) having different lengths (L) belong to each discharge device, whereby each length (L) of the stroke setting means corresponds with a desired stroke of the piston means and thereby, a desired dose volume of the product to be discharged (col 11, lines 45-65);

a plurality of brackets (Fig 17) with associated stroke setting means belong to each discharge device, that a stroke setting means, belonging to each of said brackets, allows another stroke than the stroke setting means belonging to another bracket, and that each bracket has information about the dose volume provided by its stroke setting means during use thereof in the discharge device;

the bracket can be located on the discharge device for indicating the dose volume provided by the discharge device if the stroke setting means of the bracket has been located in the discharge device.

7. Claims 1-2, 4-5, 10-11 and 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Leschinsky et al (5,873,499).

Leschinsky et al teach a device for discharge or outfeed of product from a container (Fig 1), wherein the discharge of the product from the container is accomplished by imparting a triggering movement to a trigger (Fig 3, #104), said

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triggering movement being transferred, to a piston means (Fig 3, #92) such that said piston means is brought to perform a discharge movement in a discharge direction for discharge or outfeed of the product from the container, characterized in that at least one retraction or withdrawal means (Fig 3, #106, col 3, lines 4-15) is provided for imparting to the piston means a retraction movement in a retraction direction opposite to the discharge direction, such that the pressure from the piston means against the container is relieved for accomplishing non-drop operation after discharge, that at least one stroke setting or stroke determining means (Fig 3, # 112) is provided for determining the stroke of the piston means and thereby, the dose volume during each discharge or outfeed of product from the container, and that a stroke setting means for determining a stroke of the piston means is replaceably provided (col 5, lines 35-50) on said piston means such that it can be replaced by another stroke setting means for determining or setting another stroke;

the retraction means cooperates with the piston means with such friction that it can bring along or move the piston means in the retraction direction (col 6, lines 1-20);

the stroke setting means is provided to determine the stroke of the piston means by stopping the retraction movement of the piston means in the retraction direction (col 5, lines 35-50);

the stroke setting means is replaceably provided on the piston means such that a stroke setting means which is adapted for a stroke of the piston means is replaceable by a stroke setting means which is adapted for another stroke of the piston means (col 5, lines 35-50);

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a gripping appliance (Fig 3, #108) is provided to be affected, by the trigger such that it is brought to grasp the piston means for transfer of the triggering movement of the trigger to the piston means for imparting thereto a discharge movement in the discharge direction;

the gripping appliance and the retraction means cooperate with each other such that the retraction means can pull the gripping appliance in the retraction direction relative to the piston means (Fig 3, #108);

means (Fig 3, #106) is provided to impart to the trigger (6) a return movement (B) which is opposite to the triggering movement and that the retraction means is provided to cooperate with the trigger and the piston means such that when the trigger is brought to perform its return movement by the return means, then the piston means is brought to perform its retraction movement (col 6, lines 1-20);

the retraction means has at least one follower pin (Fig 3, #102 and near #108) or similar and the trigger at least one hole or similar, whereby the follower pin cooperates with edge portions of the hole such that the return means through the trigger, imparts to the retraction means a retraction movement in the retraction direction by affecting the trigger (6) in the return direction.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Robards, Jr. et al (5,323,931) or Leschinsky et al (5,873,499) either in view of Lane, Jr et al (5,643,572).

Robards and Leschinsky teach the apparatus as discussed above.

Robards and Leschinsky fail to teach the container with the product being a flexible synthetic material and is compressible by the piston means for discharge of the product therefrom; the container having at least one discharge hole, may expand such that the discharge hole is opened and the product let out from the container, and that said parts of the container with the discharge hole may contract for closing the discharge hole after the discharge or outfeed; the container is a plastic bag.

Lane teach a collapsible pouch/ plastic bag being a flexible synthetic material (Fig 2, #20) that is compressible by the piston for discharge (Fig 13); the container has at least one discharge hole (Fig 3, #25); the container may expand to open the hole (col 4, lines 4-6); and parts of the container with the discharge hole may contract for closing the discharge hole after the discharge or outfeed (Fig 13) for the purpose of sanitary use (col 3, lines 55-60).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of either Robards or Leschinsky with a plastic bag container as taught by Lane because such a bag ensures the greatest sanitary level.

#### ***References of Interest***

11. Keller (5,137,181), Zoltaszek (5,802,691), Eyre (5,156,305), Doubleday (4,330,070) and Kuckens et al (4,518,105) are cited of interest to show the state of the art.

#### ***Allowable Subject Matter***

12. Claims 3, 6-9 and 12-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or suggest the specific combination of retraction mechanism with stroke setting mechanism set forth in the claims. In particular, **a)** the retraction means being a sleeve-like member threaded onto a piston rod and having two arms which extend in a forward direction from the sleeve-like member on opposite sides of the piston rod such that the arms at the front are connected with each other through a front member threaded onto the rod; **b)** the stroke setting means being a slotted sleeve which can be threaded onto a piston rod of the piston means from a lateral direction and which is provided such that the length thereof determines the stroke of the piston means; **c)** the stroke setting means is behind the

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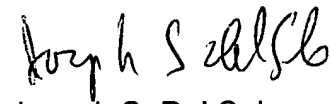
retraction means, both on the piston and the stroke setting means limits the stroke of the piston by limiting the retraction movement thereof in the retraction direction; **d)** a retraction stop means cooperating with the piston means behind the stroke setting means, the retraction stop means cooperating with the piston and the distance between the rear and front contact surfaces corresponds to idle movement of the piston; **e)** the retraction means has contact surfaces between which the gripping appliance is provided and through which the retraction means cooperates with the gripping appliance, the contact surfaces having convex arcuate shape relative to the gripping appliance, the arcuate shape constitutes parts of a circular arc, the center of which lies on or close to a geometric center line along the piston rod; **f)** the gripping appliance has washers threaded onto the piston rod and which by the triggers can be set obliquely such that they are brought to engage the piston rod and transfer the triggering movements of the trigger to the piston rod such that the piston rod is brought to perform its discharge movement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on M-F 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph S. Del Sole  
5/9/06